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APR 19 2006

OFFICE OF PETITIONS

In re Application of

JENKINS

Application No. 10/760,095

Filed: January 16, 2004

Attorney Docket No. (None)

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 16, 2005 and January 30, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, “[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]” More specifically, 37 CFR 10.40 states, “[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is” for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, the firm or James J. Ralabate no longer represent Xybernaut, do not meet any the conditions set forth in 37 CFR 10.40. See MPEP 402.06.

Additionally, the power of attorney submitted January 16, 2004 appointed James J. Ralabate and Christopher M. Tucker and did not appoint practitioners associated with Customer Number 24321. Moreover while Christopher M. Tucker is associated with Customer Number 24321,

neither requests clearly identifies whether James J. Ralabate or both James J. Ralabate and Christopher M. Tucker should be included in the withdrawal.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

There is an outstanding Office Action mailed January 26, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4787.

A handwritten signature in black ink, appearing to read "Denise Pothier", with a long horizontal flourish extending to the right.

Denise Pothier
Petitions Examiner
Office of Petitions

cc: XYBERNAUT CORPORATION
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cc: XYBERNAUT CORPORATION
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